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## THE NEED OF A SOCIALIZED JURISPRUDENCE<sup>\*</sup>

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When one bears in mind that a lost cent means to a laborer what a lost dollar means to a person well-to-do, it is apparent how important is the problem of labor complaints and claims. The sums lost by laborers in connection with their employment and living conditions in general, taken separately, are small, ranging from a few cents up to several hundred dollars, with the average, possibly, between one and ten dollars. But during a year these small sums aggregate, over all the country, millions of dollars.

The data on labor complaints and claims in the files of the various legal institutions, public and private, constitute only a fraction of the total, because not all laborers make formal complaints. They generally have no money with which to hire lawyers, and have no time to wait for a court decision which is delayed either by the common "red tape" or by some sort of legal obstacle brought in by the opposing party. They need their earnings at once and must move on in search of work. Neither have they any organization which could back a just claim of its members as does the union in many cases.

Under these conditions many laborers do not complain. They feel the injustice done them; they tell their friends; they do what they can by their own personal efforts, which ordinarily consist of "begging" for or "demanding" justice, or of some sort of a "threat" against injustice; and after such fruitless endeavors they stop, helpless and desperate. This desperation grows and grows like a smouldering fire in the heart.

<sup>\*</sup> This article summarizes the results of an investigation of labor complaints and claims and of the laws and institutions dealing with such claims. It embraces mainly the common unskilled laborers and their civil claims, involving comparatively small sums of money taken separately.

According to their nature, labor complaints and claims may be classified as follows:

1. Wages.
  - a) Non-payment of wages.
  - b) Non-payment for overtime and Sunday work.
  - c) Loss of wages resulting from absence of contract.
  - d) Loss of wages from accumulation in the hands of employer.
  - e) Loss of wages resulting from bankruptcy, real and bogus, of "wild-cat corporations."
  - f) Loss of wages resulting from time checks and certificates.
2. Private employment offices.
  - a) Excessive fees.
  - b) Non-refunding of fees.
  - c) Loss of time.
  - d) Loss in transportation expenses.
3. Overcharges.
  - a) In commissary stores.
  - b) In rent.
  - c) In board.
4. Hospital fees.
5. Fines.
6. Losses from unfair contracts and misrepresentation of labor conditions.
7. "Job-graft."
8. Loan offices and instalment houses.
9. Frauds.

Most numerous and important are the losses occurring from the non-payment of wages, especially in the case of small employers, contractors, and companies operating on a credit system, the so-called "wild-cat corporations."

The simplest cases of non-payment of wages are those where the laborers work for a certain period of time and the employer, under some pretext, refuses to pay wages, either in whole or in part.

Sometimes special higher rates are promised for overtime and Sunday work, but when the pay-day comes the higher rates are refused.

It often happens that a man takes a job without any definite agreement with the employer as to what his wages shall be. When the pay-day comes he is offered less wages than he expected and a wage claim is created in this way.

A number of wage claims are caused by the accumulation of wages in the hands of an employer who either mismanages his business or is dishonest. When the sum of unpaid wages has grown large little by little, the employer tries by some scheme to escape from paying the wages due to his laborers.

Still more numerous and serious are wage losses occurring as a result of the real or pretended bankruptcy of employers operating their enterprise, in most cases new, on a credit basis. These employers keep the wages of their employes as long as they can, assuring the men that their money on the balance of the company is "as safe as if it were deposited in the Bank of England." The men are promised payment in full when a certain work or seasonal "campaign" is finished. It often happens that when the "campaign" is over either the company disappears or it goes to pieces because it fails to market its products.

Quite a number of cases are caused by the system of paying wages in the so-called time checks and certificates instead of money. To cash these checks the laborers very often have to go long distances, sometimes as much as a hundred miles, which means to them loss of time and considerable traveling expenses, especially when they have days, sometimes even weeks, to wait. Moreover, the checks in many cases are discounted at a certain percentage of interest, sometimes up to 20 per cent straight, as, for example, in the lumber towns of Texas.

Next in importance come losses to laborers due to the objectionable methods of private employment agencies. These often charge excessive fees, send men to places where there are no jobs for them, split the fees, etc., all such practices causing, besides the direct loss in fees, considerable loss in time and transportation expenses.

Overcharges in commissary stores and for rent and board also constitute a considerable source of trouble.

Closely connected with these losses are the hospital assessments made by employers, extravagantly and very often abusively, against the wages of their men, among whom much dissatisfaction with these assessments exists. It is felt by the laborers that the employers have no right to deduct the hospital fees from their

wages; that the fees are too high; that the laborers themselves have nothing to say as to how their money is expended by the employers; that a man changing jobs has to pay double and treble fees during a month; and, finally, that the hospital fees are nothing short of an employer's graft against his men.

The Bureau of Labor of the state of Washington gathered some statistical data in regard to hospital fees in the state by sending a list of questions to employers. During the year 1913 a total of \$110,238.69 for hospital fees had been deducted from employees' wages by only 123 firms, and this sum is but a part of the total.

Fines imposed by employers upon their laborers for various reasons, as for tardiness, unexcused absence, breaking of tools, drunkenness, smoking, spoiling of material, defects in work, mistakes in accounting, violation of safety and sanitary rules, and other similar shortcomings, constitute a source of dissatisfaction, trouble, complaints, and claims.

Troubles and losses from unfair labor contracts and misrepresentation of labor conditions are considerable in number and severity. As a matter of fact, the laborer signing a contract is at a disadvantage as compared with the employer, the other contracting party. For instance, the laborer does not read the contract carefully enough before he signs it, and if he does, untrained as he is in legal matters, he cannot grasp the real meaning of the clauses of the contract.

The so-called "job-graft" by foremen is another evil resulting in laborers' dissatisfaction and complaint. It consists of the collecting of money from laborers by foremen as an insurance against pretended discharge.

The loan offices, or, as they are nicknamed by the press, "loan sharks," advance money on wages, if the borrower is employed, or on household goods, or on the signature of the borrowers' friends whom the loan shark knows either to have jobs or to possess some property. To what extent the number of loan offices has grown is shown by the report of the first conference of legal-aid societies of the United States. In 1911 in the city of New York alone there were 300 wage and chattel loan offices, a large number of which were operating in violation of the law. Philadelphia had

about 200, Chicago about the same number, and Boston 150. In Atlanta, Georgia, with a population of only 150,000, there were 58 loan offices. The proportions of one loan office to every five thousand people, one borrower in every twenty city-dwellers, and one in every five voters were found to exist in all of our cities and larger towns. In the city of New York the rate of interest charged on the loan business was found to be \$20,000,000 annually, the net profit of the lenders exceeding 100 per cent a year on the capital invested. Since then this kind of loan business has rather increased than decreased. Many employers discharge their laborers when it is discovered that they have assigned their wages for loans. The laborer, being afraid of discharge and unable to pay the loan or the interest upon it, borrows from another office so as to satisfy the first; it may happen that he has to go to a third office, and the loan becomes so large that the laborer with his household becomes utterly destitute, besides losing his job.

A considerable evil exists in the objectionable methods of the so-called instalment houses, selling clothes, furniture, jewels, etc. In such cases the complaints are against excessive prices, or the fraud of an article delivered being inferior to that purchased. Should the purchaser default in payment at any time the house can replevy the article and the purchaser forfeits the entire sum he has paid.

Finally come the losses of the earnings of laborers due to the activities of the numerous and varied swindlers, as, for example, fake employers, foremen, employment agents, fake land, stock, and outfit sellers, "quack" physicians, hospitals, and patent medicine sellers, fake and crooked lawyers, gamblers, pickpockets—all sorts of schemers who take advantage of the ignorance and helplessness of our common laborers.

## II

The institutions dealing with labor complaints and claims may be classified as follows:

### I. Public.

1. Immigration bureaus and commissions.
2. Labor departments.
3. Prosecuting attorneys.
4. Courts.

5. Police.
6. Public employment officers.
7. Labor-claims adjusters.
8. Public defenders.
9. Municipal legal-aid bureaus.

## II. Private.

1. Legal-aid societies.
2. Charity organizations.
3. Lawyers:
  - a) Wage-collectors.
  - b) Jail runners.
  - c) "Shysters."

The jurisdiction of the state immigration bureaus and commissions extends over immigrant laborers only. Their activities consist of the distribution of immigrants, the adjustment of complaints, investigations and inspection of labor and life conditions, and education and publicity.

During 1913 the Bureau of Industries and Immigration of the state of New York received about 2,000 individual complaints. Of this number about 100 complaints were made against private employment agencies, mainly for not refunding fees when positions were not secured; about 700 were made against non-payment of wages; about 40 against overcharges by the commissary runners in the labor camps; about 100 concerned accidents; finally, about 170 were made against frauds comprising dishonest practices in selling of stocks, mail-order offers, all sorts of training schools, medical help, marriage agents, fortune-telling, insurance, confidence games, and the like.

After the investigation of a complaint the Bureau tries amicably to adjust the difficulty to the satisfaction of the parties involved in the dispute. In the cases where an amicable adjustment cannot be reached, the Bureau refers to other co-operating governmental institutions, mainly to magistrates and district attorneys.

A difficult situation exists in regard to the so-called interstate cases. During the year 1913 there were more than 400 interstate cases. In these the Bureau, lacking jurisdiction, is helpless.

The policy of "amicable adjustment" is in itself a good one, but what is to be done in the numerous cases where such adjust-

ment is impossible, where very tangible interests are diametrically conflicting, and where each side believes in its right, real or assumed? The turning of such cases over to the other local institutions for legal decision and enforcement is complicated and requires time. Besides, the other institutions are not always willing to accept such cases. As time goes on even the amicable adjustment of difficulties necessarily becomes less efficient because the disputants learn that the Bureau has no power of decision and enforcement.

The Commission of Immigration and Housing of the state of California has received 2,224 complaints during the period from April 24, 1914, to January 11, 1915. When a complaint had been investigated and an amicable adjustment could not be reached, the Commission directed the case, with the evidence gathered, to the corresponding authorities for action. Three hundred and thirteen claims were referred to the state labor commissioner, 287 of which were wage claims; the others were claims against private employment offices. Only a few of the wage claims were without foundation. Other important cases were as follows: 193 land frauds, 260 frauds of criminal nature, 22 frauds by attorneys-at-law, 31 "quack" doctors, 163 business frauds, 170 frauds of private employment agents, 25 insurance frauds, 10 transportation-ticket frauds, and 6 white-slavery cases.

Although the field of the duties of the Commission prescribed by law is somewhat larger than that of the New York Bureau, the legal power of the latter, although inadequate in general, is a little greater than the legal power of the California Commission. The New York Bureau has the power to subpoena witnesses for public hearings, to examine all books, contracts, records, and documents of any person or corporation, and by subpoena duces tecum to compel production thereof (Article 11, § 154). The California Commission lacks this power, which is a serious defect in the authority of the Commission.

The adjustment of civil labor claims has never been made an official duty of the state labor departments. Still, almost all departments voluntarily accept and adjust a limited number of labor claims, mainly through their factory inspectors. The labor



departments of California and Washington especially have done a good deal of the work of adjusting labor claims, the former by a voluntary enforcement of the two state laws known as the payment-of-wages law and the pay-check law; the latter also has voluntarily attempted to adjust labor claims. Their attempts have been illuminating.

The number of complaints and claims concerning non-payment of wages and frauds of private employment offices filed with the California labor department and investigated by the latter during the three fiscal years ending June 30, 1914, was as follows:

	Total for Period 1911-14	Fiscal Year 1913-14	Fiscal Year 1912-13	Fiscal Year 1911-12
Non-payment of wages.....	12,802	7,330	3,573	1,899
Private employment agencies:				
License.....	124	31	72	21
Misrepresentation.....	1,868	923	479	466
	14,794	8,284	4,124	2,386

Disposition of claims filed for non-payment of wages was as follows:

	Claims Filed	Claims Collected	Amount of Wages Collected
Fiscal year ending June 30, 1914.....	7,330	4,904	\$110,911.93
Fiscal year ending June 30, 1913.....	3,573	2,213	26,450.69
Fiscal year ending June 30, 1912.....	1,899	1,292	24,445.59
	12,802	8,409	\$171,808.21

The First District Court of Appeals for the First Appellate District of the state of California declared the payment-of-wages law unconstitutional, November 23, 1914. After this decision the state labor department was unable to force payment on many of the complains received. A new wage-payment law recently enacted and not yet tested in the court is now in operation in California.

During the sixteen months beginning April 7, 1913, and ending August 1, 1914, more than 623 wage claims were handled by the labor department of the state of Washington. Of these, 146 cases, amounting to a total of \$7,933.44, were adjusted amicably;

in the remaining 477 cases, amounting to about \$35,105, the claimants were directed to file civil suits.

The labor commissioner states in his report<sup>1</sup> that as a matter of fact a majority of these claims belonged to the class that an attorney does not consider it profitable to handle, and that it "may be said, from the experience obtained in handling these claims, that the non-payment of wages causes untold distress among the working people of this state and exists to an extent that would surprise those unacquainted with it. . . . Here to a great extent we find the fountainhead of the I.W.W. movement."

The authority of prosecuting attorneys covers criminal cases only, comprising, in connection with others, those labor complaints and claims which are connected with fraud and violation of existing laws in general. Even in these cases the prosecuting attorneys are concerned only with the criminal side of the claims, while the civil side must be taken care of by the claimants themselves.

A number of labor complaints and claims are prosecuted in lower courts—justices of the peace in rural districts and small towns and police justices and judges and municipal courts in larger cities. The majority of these lower courts are operating on a fee system and in most of the cases they do not accept oral complaints.

At the very outset of a court proceeding a common laborer finds himself in difficulty. He does not know how to write a petition; for this purpose he must find a lawyer and must pay him a fee, very often in advance. He also must pay the required initial court fee, and not seldom must furnish a bond for further court expenses, as for serving subpoenas and summons, for attaching property, etc. A common laborer very often is unable to make these payments, especially as he has not received his latest wages, for which he is about to sue his employer in the court. When he has succeeded in bringing his case into the court, other difficulties are awaiting him. One is the common court "red-tape" method, sometimes called "the law's delay," resulting in the prolongation of a case for months, sometimes a year and even more, while the complainant, as a common laborer, has no time to wait but must move on in search of work. The second difficulty consists in the fact that his

<sup>1</sup> *Ninth Biennial Report*, 1913-14, pp. 194 and 195.

opponent, being economically stronger, can hire a better lawyer, which diminishes the chance of the complainant to win his case.

Mr. Walter J. Wood, public defender of Los Angeles County, addressing the California Bar Association in November, 1914, made the following statement in regard to the lower courts in America: "Our legislatures have failed to put the courts within the reach of the poor man. Apparently his small affairs have been classed among those matters which the law considers trifles!" A number of leaders and officials of legal-aid societies interviewed by the writer also pointed out the inefficiency of the lower courts in the prosecution of labor complaints and claims. As a result there has appeared a new type of courts, usually known as the "poor man's courts," in several cities. Their characteristic features are simplified procedure, prompt judgment, and cheapness.

The Cleveland municipal court act provides for the litigant who is unable to engage a lawyer. For this purpose a clerk with legal training and experience is designated by the court. During the year 1912, 1,200 cases were settled without going to court. The number of cases where only advice was given was no less. This led the Municipal Court to the establishment, in March, 1913, of a special branch entitled Conciliation Court. All claims under \$50 are directed to this court. The defendant is notified by registered mail of the claim and of the date of hearing. Lawyers are not allowed to appear for either side. This Conciliation Court, during the period from March, 1913, to September, 1914, has disposed of 5,884 cases out of 6,184 filed.

More than a year ago the state of Kansas, by legislative action, created what are known as the "small debtors' courts" in the cities of the state. In these courts all civil claims up to \$20 are settled in an informal but strictly legal way. No lawyers are allowed to appear for either side. There are no court costs. During the past year 378 cases were filed in the Small Debtors' Court in Topeka. In addition, about 50 cases were referred to the judge and settled by the debtor without any formality. Most of the cases were wage claims.

The Municipal Court in Chicago, Illinois, opened a new branch, officially known as the "Court of Small Claims," February 26,

1915. This court also has for its object, primarily, doing away with the law's delay in the settlement of cases where the amount involved does not exceed \$35. No lawyers are allowed to appear. The cases are adjudged through a common-sense talk, instead of by cross-examinations and other legal technicalities known as "red tape."

A similar court is successfully operating in Toledo, Ohio.

A number of labor complaints and claims are adjusted by officials of the police, especially when a police department is made responsible for the enforcement of some labor law, as, for instance, the law regulating private employment agencies. In a number of states and cities the public employment officials are made responsible for the adjustment of labor complaints and claims, especially of those which result from the objectionable methods of private employment offices. Even in this sphere the law gives them no authority except to inspect and supervise the private employment offices. Besides, the more direct duties in their own offices do not allow them to give proper attention to the adjustment of labor complaints and claims.

Under the constant pressure by the laborers upon city authorities, urging that their complaints and claims be satisfied in short order, several cities have created a special institution called "labor claims adjuster." For instance, in the city of Seattle, an examiner of the civil service was made a "labor-claims adjuster," whose duty is personally to investigate labor complaints and claims, especially those against private employment offices. When an amicable adjustment cannot be reached, he refers the claimant to a private attorney, who in most cases charges a fee only to the side from which judgment is secured. No record is kept of complaints and claims either brought in or adjusted. The labor commissioner made a statement that approximately five complaints and claims each day are made. Cases of non-payment of wages constitute the highest number of claims, followed by complaints against private employment offices. About \$300 in fees is refunded each month. Mr. D. P. Kenyon, labor claims adjuster, stated that his business is growing and that he needs assistance and more authority.

To afford free legal aid to people without means there has appeared a public defender system in a number of cities. A Los Angeles County charter created the office of public defender in June, 1914. Besides criminal cases, the public defender shall, if requested, prosecute actions for the collection of wages and other civil claims of persons unable to employ a lawyer in cases in which the amount involved does not exceed \$100, and where, in his judgment, the claims are valid and enforceable in the courts. The official in charge, his assistants, and other forces are under civil service. They are not allowed to practice law outside of their office. Legal aid is given free. The salaries and other expenditures, including traveling expenses, are paid out of the county treasury.

From January 7 to September, 1914, about 5,000 applications for assistance in civil matters were filed. Of these, about one-third were wage claims. During the single month of March, 1915, the office had received 1,034 applications for assistance in civil matters. Of these, 315 were matters for the collection of wages or involving labor disputes; 652 were cases in which the applicants desired advice only on legal points, and 188 were refused by the office because the claims were in excess of \$100 or because the applicants were able to employ attorneys.

When a claim is filed the office informs the defendant, inviting him to appear on a certain date. Each side brings its witnesses and the case is heard in an informal way by assistants of the public defender. They usually leave the case to the judgment of that official before going to court. About three-fourths of the cases are amicably settled in the office.

In general it may be said that the office of public defender is a legal-aid bureau conducted by the county of Los Angeles, differing, however, from the commonly known legal-aid societies as follows: It is not a private charitable establishment. It has its own permanent attorneys, appointed under civil service and paid by the county, which also pays all other expenses of the office. Having public authority, it is more successful in the rôle of a voluntary arbitration court than is possible in the case of private legal-aid societies. The office of the public defender in Los Angeles has

resulted in decreasing expenses to the taxpayer through shortening the court proceedings and through voluntary arbitration without going into court.

Similar to public defenders are municipal legal aid bureaus which are supported and controlled by the public. The first bureau of this type was established in Kansas City, Missouri, a number of years ago. It operates under the general control of the city Board of Public Welfare, although it has no charter authority. Its officials are under civil service. The city council makes adequate appropriations for its support and no lack of funds is felt by the Bureau. The approximate cost to the city of the handling of each case is 90 cents. During the year ending April 18, 1913, 5,354 cases (among them 2,396 wage claims and 69 wage assignments) were handled by the Bureau, and \$10,962.65 was collected.

The common type of legal-aid society is a private charitable organization supported by subscriptions and donations. A large number of them charge a nominal fee to the client, for two reasons: to make the service appear less charitable, and to add to the income, as almost all the private legal-aid societies suffer from a lack of funds.

Besides material weaknesses, the private legal-aid societies have another difficulty—that of being charitable organizations. A self-respecting man, no matter how poor, does not like to apply for charity in any form. Then, again, the private legal-aid societies, having no public authority, are less successful in the rôle of a voluntary arbitration court than are public defenders and municipal legal-aid bureaus. Still they have rapidly developed in number and in the extent of their activities, which indicates that there is a great need for legal assistance among the masses. A large number of them must be credited with having done a highly valuable social work.

In almost all of their reports, wage claims and cases against private employment offices and loan sharks are large in number. During the fiscal year 1913 the Legal Aid Society of New York handled 12,090 wage claims in a total of 26,383 cases of all kinds.

Almost all general charity organizations do legal aid work to a certain extent. A number of them have employed attorneys or

organized special committees for this purpose. Although it is claimed that legal-aid work is one of the most important functions of charity associations, it is usually done in rather a primitive fashion.

As a rule, prominent and experienced lawyers seldom accept small labor complaints and claims. The money involved is not enough to pay for their services; there is no opportunity for publicity, or, at least, not for the kind of publicity they want; and, moreover, their regular clients are employers. This is especially true in regard to the so-called corporation lawyers.

Among the inferior grades of lawyers, the best are the young and inexperienced men. On account of their lack of experience they are no match for the corporation lawyers, nor for the counsel of the employers in general. Next follow wage-collections agents—lawyers who have made wage cases their main practice. Usually more than one-half of what sums of wages they collect goes into their own pockets, which means little help to those who had really earned the wages. The lowest type of lawyer is known as “shyster” (winkel advocate, corner lawyer). There are quite a number of varieties of this type, called “jail runners,” “vampires,” “legal vermin,” “snitch lawyers,” etc. In many cases, instead of helping others they help themselves. They frequent the jails, where the accused and arrested, ignorant of the law and of the selecting of attorneys—especially the case with immigrants—are in need of legal aid and fall an easy prey to shysters and their interpreters—the “go-betweens.”

In several cases an interviewed laborer stated, when asked what he did with his money after he had quit a certain job, “Lawyer took away!”

### III

The foregoing narrative shows that the existing labor and life conditions of common laborers in this country produce immense numbers of justified labor complaints and claims, involving not only large sums of money in the aggregate, but untold personal hardship and suffering; that the present public and private legal

institutions are utterly inadequate to secure justice to the laborers in the matter of these complaints and claims; and that such a situation is creating in the laborers distrust of the government, of employers, and of well-to-do classes generally, and is one of the contributory causes of the existing industrial unrest.

To meet the situation, two reforms on a nation-wide scale are necessary: public legal assistance to citizens who have no means to employ able lawyers, and free impartial courts, with simplified and expeditious procedure.

The comparatively successful local attempts to meet this need, in the form of public defenders, municipal legal-aid bureaus, and "poor man's courts," show the way of reform. In the main, there is not very much difference between public defenders and municipal legal-aid bureaus. Both are supported by the public and both are guarded against politics by civil service. Still, the title of public defender is preferable to that of municipal legal-aid bureau, because the word "aid" may be considered as carrying with it the taint of charity.

In regard to the reform of our lower courts, several suggestions are made. One proposes the establishment of a system of industrial courts similar to those of Europe. Another favors the type of small debtors' courts, commonly known as "poor man's courts," above described. A third advocates the reform of our existing lower courts instead of the creation of new ones.

To establish a new type of courts, especially that of the industrial courts of Europe, would possibly be a difficult task. First, our constitutional limitations would be a drawback; secondly, the European industrial courts have a representation of interests on the bench, which is hardly possible here under existing conditions. In Europe skilled and unskilled workers are organized into the same general bodies, although in different branches, while our unskilled laborers are not organized at all. In Europe there is very little difference in conditions between skilled and unskilled workers, while the difference in America is wide, even so wide as to cause strife between these two classes of workers. Therefore at present it would hardly be possible for the unskilled laborers in America



to have their interests properly represented in industrial courts. This possibility may come in the future when our industrial evolution shall have diminished, if not eliminated, the differences in condition between the skilled and the unskilled. There is already a marked tendency toward such a change.

Therefore, reform of the existing lower courts is preferable to the establishment of new courts. This reform of existing courts must consist of (1) elimination of court fees and other court costs in civil cases, (2) simplification of procedure so as to eliminate the need of written petitions and lawyers, and (3) a quick disposal of cases.

That such reform of the lower courts is necessary and possible is shown by the comparative success of the "small debtors' courts."

Reform of this character would naturally mean a free administration of justice on the basis of socialized jurisprudence.

The administration of justice for our needy citizens must be free, **at the expense of the public—it must be a right, not a charity!**